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AZ CORP COMMISSION
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**BEFORE THE ARIZONA CORPORATION COMMISSION**

ARIZONA WATER COMPANY, an Arizona corporation,

Complainant,

vs.

GLOBAL WATER RESOURCES, LLC, a foreign limited liability company; GLOBAL WATER RESOURCES, INC., a Delaware corporation; GLOBAL WATER MANAGEMENT, LLC, a foreign limited liability company; SANTA CRUZ WATER COMPANY, LLC, an Arizona limited liability corporation; PALO VERDE UTILITIES COMPANY, LLC, an Arizona limited liability corporation; GLOBAL WATER - SANTA CRUZ WATER COMPANY, an Arizona corporation; GLOBAL WATER – PALO VERDE UTILITIES COMPANY, an Arizona corporation; JOHN AND JANE DOES 1-20; ABC ENTITIES I - XX,

Respondents.

DOCKET NO. W-01445A-06-0200
SW-20445A-06-0200
W-20446A-06-0200
W-03576A-06-0200
SW-03575A-06-0200

**COMPLAINANT ARIZONA WATER COMPANY'S RESPONSE TO THE GLOBAL ENTITIES' MOTION TO DISMISS**

Arizona Corporation Commission
DOCKETED
MAY 15 2006
DOCKETED BY

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Complainant Arizona Water Company hereby opposes the motion to dismiss filed by Respondents Global Water Resources, LLC, Global Water Resources, Inc., Global Water Management, LLC, Santa Cruz Water Company, LLC ("SCWC"), Palo Verde Utilities Company, LLC ("PVUC"), Global Water – Santa Cruz Water Company, and Global Water – Palo Verde Utilities Company (collectively, "Respondents" or "Global Entities"). A motion to dismiss is entirely inappropriate at this early stage in the proceedings, especially given the factual issues raised by Arizona Water Company's formal complaint, which have now been affirmed, expanded or dismissed by the Global Entities' own motion, misstatements, arguments and submission of matters outside the pleadings.

The Arizona Corporation Commission ("Commission") has jurisdiction to decide the issues raised in Arizona Water Company's formal complaint, and Respondents' efforts to shield themselves from any degree of Commission oversight or scrutiny by means of a motion to dismiss at this early stage of the proceedings should be rejected. Finally, even if there were no fact issues, Respondents' legal arguments fail as a matter of law. For these reasons, Respondents' motion to dismiss should be denied in its entirety.

## I. RESPONDENTS CANNOT MEET THE STANDARDS NECESSARY TO DISMISS THIS FORMAL COMPLAINT ON THE PLEADINGS BY A MOTION TO DISMISS.

It is axiomatic that motions to dismiss filed at the very onset of pleadings are strongly disfavored under Arizona law, which applies to this proceeding through the Commission's incorporation of Rule 12(b) of the Arizona Rules of Civil Procedure through the Arizona Administrative Code. Respondents argue that such motions are recognized in the Commission's rules (A.A.C. R14-3-106(H)) while ignoring whether motions to dismiss are favorably regarded, which they are not. Then, Respondents make dozens of brazen, unsworn factual assertions—many of which are flatly wrong—throughout their motion and assert that it should be granted since they believe that, without any discovery or hearings,

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sworn testimony, or evidence, their view of the facts is beyond challenge.[1] Under Arizona law, "Motions to dismiss for failure to state a claim *are not favored* and *should not be granted* unless it appears that the plaintiff should be denied relief as a matter of law given the facts alleged." *Logan v. Forever Living Products Int'l, Inc.*, 203 Ariz. 191, 193, 52 P.3d 760, 762 (2002)(en banc)(citing *State ex rel. Corbin v. Pickrell*, 136 Ariz. 589, 594, 667 P.2d 1304, 1309 (1983)) (emphasis added).

Arizona Water Company's formal complaint raises a wide array of material and crucial factual issues, including, without limitation, the details of the interrelationships of the Global Entities, the full range of their activities in Pinal County and elsewhere leading up to the events listed in the complaint, the nature, background and motivation behind the various agreements that violate the Commission's rules and policies, the unregulated Global Entities' promises to developers made outside the four corners of such agreements, the parties' respective track records before the Commission and in Pinal County, applicable rates to be charged, and the parties' present and future abilities to provide reliable water service in the contested areas. "When a complaint is the target of a rule 12(b)(6) motion, the [Commission] must assume the truth of all of the complaint's material allegations, accord the plaintiffs the benefit of all inferences which the complaint can reasonably support, and deny the motion unless certain that plaintiffs can prove no set of facts which will entitle them to relief upon their stated claims." *Luchanski v. Congrove*, 193 Ariz. 176, 179, 971 P.2d 636, 639 (App. 1999)(quoting *Gatecliff v. Great Republic Life Ins. Co.*, 154 Ariz. 502, 508, 744 P.2d 29, 35 (App. 1987)). Dismissal for failure to state a claim is appropriate *only* if "as a matter of law ... plaintiffs would not be entitled to relief under any interpretation of

[1] For example, at p. 2, l. 26 of their motion, Respondents state that "AWC declines to provide wastewater and reclaimed water services." As the Commission and Staff well know through other proceedings, Arizona Water Company provides reclaimed water in different areas of the state. Arizona Water Company also stands ready to discuss coordinating the provision of wastewater services to any development through its association with its wastewater partner, just as SCWC associates with PVUC for the provision of those services.

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the facts susceptible to proof." *Rowland v. Kellogg Brown & Root, Inc.*, 210 Ariz. 530, 534, 115 P.3d 124, 128 (App. 2005)(citing *Fidelity Sec. Life Ins. Co. v. State Dep't of Ins.*, 191 Ariz. 222, 224, 954 P.2d 580, 582 (1998).

Not only do Respondents completely fail to establish that Arizona Water Company would not be entitled to relief under any interpretation of the facts alleged, assuming each and every one of those facts to be true, Respondents also make the case for the denial of their own motion by repeatedly asserting that they are entitled to dismissal based purely on a set of "facts" as only they see them. Virtually every argument section of Respondents' motion contains assertions and misstatements specifically attempting to controvert the facts alleged in Arizona Water Company's formal complaint, the majority of which will be hotly contested when evidentiary hearings begin in these proceedings. Respondents are putting the cart before the horse in asserting that the Commission need not address these fact issues and instead can dismiss the complaint as a matter of law. Arizona law is very clear that a motion to dismiss is inappropriate at this early stage in the proceedings.

## II. CONCERNING COUNT ONE, THE COMMISSION SHOULD REJECT RESPONDENTS' ATTEMPT TO ESCAPE APPROPRIATE REGULATORY OVERSIGHT BY DISMISSAL OF THE FORMAL COMPLAINT.

### A. The Commission, Not The Courts, Has The Authority To Decide The Status Of The So-Called "Unregulated Global Companies."

Based solely on the Respondents' unsupported and unilateral conclusion as to the Commission's eventual findings and conclusions on the numerous factual inquiries, they argue that, because they themselves have decreed that "The Unregulated Global Companies are not public service corporations," Motion at p. 6, l. 24, the Commission does not have jurisdiction over them and the matter must be dismissed before the Commission makes any inquiries into their status. As set forth above, that is an inappropriate basis for a motion to dismiss. The Commission, not the Global Entities, must decide whether certain of those entities are public service corporations, and that inquiry is, necessarily, very fact-intensive, thus precluding dismissal at this early stage.

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The Commission's authority derives from the Arizona Constitution, and its authority is broad. Arizona Constitution, Art. 15, § 3; *Southwest Gas Corp. v. Arizona Corp. Comm'n*, 169 Ariz. 279, 283, 818 P.2d 714, 718 (App. 1991). Indeed, "[n]o other state's constitution has given its commission the extensive power and jurisdiction that the Arizona Corporation Commission possesses." *Arizona Corp. Comm'n v. Superior Court*, 107 Ariz. 24, 26, 480 P.2d 988, 990 (1971)(citing *State v. Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. 294, 300, 138 P. 781, 783 (1914)). Article 15, § 3 of the Arizona Constitution gives the Commission broad regulatory power over public service corporations. *Southwest Gas*, 169 Ariz. at 283, 818 P.2d at 718. The Commission is empowered to exercise legislative, judicial, administrative and executive functions of government within the sphere of its responsibilities. *Id.* at 283. The Commission's judicial power "includes the determination of whether a particular business is a public service corporation." *Id.* at 284.

The Commission is not only fully empowered to make this determination, it is the best equipped body to do so. This matter must proceed forward into the full range of factual investigation necessary to begin the analysis of whether each of the Global Entities must indeed be regulated as a public service corporation. For example, Respondents assert that "the ICFA is careful to separate the roles of Global Parent and the regulated subsidiaries," p. 7, ll. 3-4, and that the unregulated companies do not actually furnish utility services. But in fact the lines are hopelessly blurred in the ICFA, which requires actions by the regulated Global entities, SCWC and PVUC, making it necessary for the Commission to investigate many fact issues about how utility plant is financed and how utility service is provided. Likewise, Respondents solemnly promise that they will "continue [their] policy of keeping the Commission apprised of all material events affecting Global," p. 6, ll. 4-5, while embroiled in the midst of a Commission investigation into SCWC's and PVUC's blatant violation of a Commission order requiring prior notice to the Commission of insider transfers of corporate interests within Global Water Resources LLC to existing Global officers or key management personnel, further details of which are set forth in paragraph 26

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of Arizona Water Company's formal complaint.[2] Respondents' "policy" about keeping the Commission informed is sorely lacking, and this issue underscores the importance of a full Commission investigation of the Global Entities' conduct.

### B. Whether The Unregulated Global Entities Are Alter Egos Of The Regulated Respondents, Or Are Themselves Public Service Corporations, Are Critical Issues Of Fact To Be Resolved In These Proceedings.

Arizona Water Company has alleged facts leading to the conclusion that the unregulated Global Entities are operating as alter egos of the regulated Global Entities; under the established law presented above, that ends the inquiry for purposes of the pending motion, since those allegations must be accepted as true. Dismissal of the Complaint based on the assertions and misstatements in Respondents' motion is particularly inappropriate on issues concerning an alter ego analysis, which is by definition heavily fact-intensive. The corporate form "will be disregarded when the corporation is the alter ego or business conduit of a person, and when to observe the corporation would work an injustice." *Dietel v. Day*, 16 Ariz. App. 206, 208, 492 P.2d 455, 457 (App. 1972). The alter ego status is said to exist "when there is such unity of interest and ownership that the separate personalities of the corporation and owners cease to exist." *Standage v. Standage*, 147 Ariz. 473, 476, 711 P.2d 612, 615 (App. 1985). The Commission is in no position to make these fact-specific determinations at the motion to dismiss stage based on the assertions of the Global Entities without the benefit of disclosures, discovery and investigation of the relevant facts.

Moreover, determining whether a particular business is a public service corporation involves a three-step process and application of an eight-factor test to the individual facts of each case. The three-step process requires: (1) the gathering and reception of evidence; (2) the distillation of that evidence into findings of fact; and (3) the application of those facts to the constitutional standard defining public service corporations. *Southwest Gas.*, 169 Ariz. at 284, 818 P.2d at 719. Arizona courts have focused on the following factors, set forth in

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[2] Again, under Arizona law, for purposes of Respondents' motion each of these allegations must be taken as true.

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*Natural Gas Service Co. v. Serv-Yu Cooperative*, 69 Ariz. 328, 213 P.2d 677 (1950), *approved on rehearing*, 70 Ariz. 235, 219 P.2d 324 (1950), to determine whether a business is a public service corporation: (1) what the corporation actually does; (2) a dedication to public use; (3) articles of incorporation, authorization, and purposes; (4) dealing with the service of a commodity in which the public has been generally held to have an interest; (5) monopolizing or intending to monopolize the territory with a public service commodity; (6) acceptance of substantially all requests for service; (7) service under contracts and reserving the right to discriminate is not always controlling; and (8) actual or potential competition with other corporations whose business is clothed with public interest. *Southwest Gas*, 169 Ariz. at 237-38, 219 P.2d at 325-36 (1956). Intensive discovery and investigation into each of these factors will need to be undertaken by the Administrative Law Judge and eventually the Commission to decide the public service corporation questions in this matter.

It is difficult to conceive of a more fact-intensive inquiry than what is framed in Arizona Water Company's formal complaint on these issues. Since all of the facts alleged in that complaint regarding the Global Entities must be accepted as true for purposes of this motion, dismissal of Count One concerning regulation of the unregulated Global Entities is inappropriate at this stage.

## III. CONCERNING COUNT TWO, RESPONDENTS' ILLEGAL FINANCING ARRANGEMENTS AND FEES SHOULD NOT ESCAPE COMMISSION OVERSIGHT.

### A. The ICFA Fees And Charges Are Subject To Commission Oversight And Factual Issues Preclude Dismissal Of This Claim At This Early Stage.

As detailed in Arizona Water Company's formal complaint, certain of the Global Entities provide services to landowners under its ICFAs, such as developing master utility plans for services and providing construction services for water and wastewater treatment facilities to furnish utility service to their properties. Respondents contend that they are not providing utility services, but "developing master plans" and "furnishing construction services" for water and wastewater treatment facilities, all of which are precisely what

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public service corporations provide to developers/landowners in the form of main extension agreements and/or master facilities agreements.

Respondents contend that the ICFAs merely provide for financing and coordination for the provision of infrastructure in advance of customer connections.[3] However, under longstanding Commission rules and practice, main extension agreements are typically entered into and paid for by the developer under a refundable agreement, and refunds are then made pursuant to the terms of the agreement. Nothing in the ICFAs contemplates any provision for refunds. In fact, the ICFA states that "Nothing in this Agreement should be construed as a payment of principal, a contribution or advance to the utilities and will bear no repayment of any kind or nature in the future." [4] These provisions are totally at odds with the Commission's Rules, which provide that offsite improvements may be part of advances in aid of construction if costs of required facilities are disproportionate to the project's expected revenues. *See* ACC R14-2-406.

The Commission's main extension rules protect the utility, the developer and the ratepayer. The ICFAs protect no one except the Global Entities. Developers' advances in aid of construction ("Advances") do not build rate base until there are customer connections or revenues which generate a refund of the Advance. In contrast, the unregulated Global Entities represent that they will provide equity funding for the utilities. But the Commission's policy is that if a project's revenues are disproportionate to the costs of required facilities, the funding should be in the form of Advances, not shareholder funds.

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[3] The Global Entities' characterization of its ICFAs as "merely a financing tool," Motion at 1, also raises the issue of whether the ICFAs are securities requiring Commission oversight and regulation on that basis. (See A.R.S. 40-301, *et seq.*) Respondents cannot immunize the ICFAs from regulatory oversight by downplaying them as financing arrangements. Instead, Respondents have raised additional issues meriting Commission investigation and analysis.

[4] The ICFAs also require the regulated Global Entities to provide, at their cost, offsite infrastructure "with no guarantee of customer connections" (Complaint, Exhibit 1, page 1).

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Utilities should not build infrastructure based upon speculation as to future customers and revenues. Current customers should not be saddled with providing a return on infrastructure plant installed to serve future customers. The Global Entities' scheme to circumvent the Commission's rules can and will have a significant effect on ratepayers' costs, not to mention the landowners and developers who are deprived of refunds altogether.

Respondents also contend that they are free to evade Commission oversight because the ICFAs provide for service to landowners, not utility customers. Motion at p. 8, ll. 7-8, 13. The unregulated Global Entities claim that SCWC and PVUC provide the actual utility service to the customers, and the unregulated Global Entities simply provide coordination between the landowner and SCWC and PVUC. But these assertions are contradicted by the terms of the agreement, and once the facts become known, by the actual operation of the Global Entities' financing scheme. The ICFAs bind the landowners and subsequent owners (such as homebuilders and developers, the real parties developing the subdivisions, and ultimately the customers themselves) to enter into main extension contracts for and to receive water and wastewater service exclusively from SCWC and PVUC, even if they are currently within Arizona Water Company's CCN, no matter what the public interest may be. The unregulated Global Entities dictate the terms and obligations of the offsite infrastructure for SCWC and PVUC. Under the ICFAs, the unregulated Global Entities are obligated to cause SCWC and PVUC to provide water source, storage and wastewater treatment and to construct water and wastewater lines to the property line of the landowner's land.

However, main extension agreements for subdivisions generally are not with utility customers themselves. Like the ICFAs, they generally are with the developer, which is not the ultimate utility customer and ratepayer. The fact that the developer is generally not the customer does not divest the Commission's jurisdiction and regulatory authority over main extension agreements and the terms of extending infrastructure. The ICFAs are a blatant attempt to bypass the Commission's rules and its authority. The Commission should not tolerate the unregulated Global Entities sidestepping the Commission's oversight of the

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provision of utility services in Arizona by allowing them to unilaterally declare that they are not regulated utilities and that the landowners are not utility customers.

Respondents next contend that hook-up fees generally pay for offsite facilities, while the ICFAs do not. Motion at p. 8, l. 18. However, the ICFAs do obligate SCWC and PVUC to bring the offsite mains, collection system, source and storage capacity to the landowner's land at the expense of SCWC and PVUC and ultimately their customers. In that respect, the ICFAs are the same as hook-up fees. Under the ICFA scheme, the unregulated Global Entities extract some amount of money from the landowner (which is characterized—and this will be a major fact issue—as a "carrying cost") and use that money to make equity investments in SCWC and PVUC and have SCWC and PVUC build infrastructure that increases the rate bases of SCWC and PVUC. This maneuver circumvents the Commission's main extension rules and inflates the cost of service to SCWC's and PVUC's customers. This shifts risk to the utilities and increases the revenue requirement. Using ICFA funds as a source of equity investment in the regulated Global Entities to construct the infrastructure needed to satisfy the unregulated Global Entities obligation to the landowner subverts the checks and balances embodied in the Commission's main extension rules. In effect, the unregulated Global Entities are collecting massive nonrefundable fees from the landowners and funneling them so that they appear as equity on the SCWC and PVUC books to be included in rate base, at the ultimate cost of the regulated Global Entities' ratepayers.[5]

[5] The ICFAs are just the latest attempt by SCWC and PVUC to bypass the Commission's main extension rules; as set forth in paragraph 38 of Arizona Water Company's formal complaint, the Commission already expressly denied requests by SCWC and PVUC to charge similar start-up fees to developers and landowners in Decision No. 61943 (September 17, 1999)(attached as Ex. 2 to complaint). At $3,300 per equivalent dwelling unit (EDU), and a section of land including 2,500 EDUs, the Global Entities' unregulated "piece of the cake" would be $8,448,000 per section—one whopping "carrying cost"!

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Respondents also contend that the ICFA fees do not constitute hook-up fees because of when they are collected. Motion at p. 9, ll. 3-9. However, hook up fees need not be collected until the time service is established. The ICFAs provide that all fees are paid by the time of final plat recordation. In addition, the fees to be collected are increased by a CPI factor after the date of executing an ICFA. Fees are also collected based on approved zoning for any remaining equivalent dwelling units ("EDUs"). It is not likely that water service to any lot would occur prior to the collection of any applicable ICFA fee since the recorded plat triggers payments for all EDUs.[6] Hook-up fees paid when service is established are normally paid by the homebuilder, not the ratepayer. The economic impacts of the ICFAs will be paid by the ratepayers in the form of higher rates, because the offsite infrastructure was not funded through Commission-required Advances. Respondents' bald-faced assertion that "A ratepayer will never have to pay the ICFA fee," p. 9, l. 9, is misleading on its face and belied by the facts.

Respondents also contend that its ICFA fee is "entirely voluntary," as opposed to "mandatory." Motion at p. 9, ll. 10-15. Again, the ICFAs themselves belie this assertion, and more factual discovery is necessary to fully develop how this scheme works. The ICFA have been entered into before a landowner's land is within SCWC or PVUC's CCN. Landowners are not able to enter into main extension agreements with SCWC or PVUC unless the land is within the utility's CCN, but Global will not allow SCWC or PVUC to bring the land into their CCN until the landowner signs an ICFA. Then, the landowner (and every succeeding owner of that land) becomes obligated to pay the ICFA charge at the time of final plat recordation, even though the project may never be built. Signing an ICFA and

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[6] Cross–default provisions further link the ICFAs and the regulated Global Entities' in-tract Main Extension Agreements. The ICFAs provide, under Section 6, *Default*, "A Default by Landowner under this Agreement shall constitute a default by Landowner under the Extension Agreements and a default by Landowner under the Extension Agreement(s) shall constitute a default under this Agreement." That means if a landowner does not pay off the unregulated Global Entities, the underlying utilities can cancel or refuse service.

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paying tribute to the unregulated Global Entities in the form of ICFA fees are mandatory prerequisites for inclusion in SCWC and PVUC's CCN, and effectively become mandatory conditions of receiving public utility service. All of this happens without Commission oversight, regulation or approval. On the other hand, hook-up fees are regulated by the Commission, which has the exclusive authority to establish them and permit utilities to collect the fees as contributions in aid of construction ("Contributions") offsetting rate base, or as revenues.

Respondents also contend that the ICFAs allow for master planning. Motion at p. 10, ll. 1-2. However, master planning can—and should—be accomplished by SCWC and PVUC without the ICFAs. Moreover, funding all of the offsite infrastructure through equity funding from the unregulated Global Entities' collection of ICFA funds will cause a higher cost of service and higher rates than under the Commission's longstanding policy and rules for funding utility plant, and as such is adverse to the public interest. Respondents' unsupported assertions about the alleged benefits of ICFAs to the ratepayers have not been demonstrated in any objective or quantitative manner, and the overall impacts of ICFAs await full discovery and scrutiny by the Commission as this matter unfolds.

Respondents also contend that the ICFAs shield the regulated Global Entities from risk. Motion at p. 10, ll. 9-11. To the contrary, the ICFAs place the burden of paying fees on the landowners (and ultimately the homeowner) and the fees, when Global funnels them back into the utility, increase the regulated utilities' rate base and require inflated rates from rate payers even if the subdivisions are not fully built out. In actuality, the ICFAs shield *the unregulated Global Entities*, not the ratepayers, from risk since the ICFAs require the current landowner and any subsequent landowner to pay the ICFA fees, plus any changes in the CPI, with late fees assessed at 15 percent interest against the landowner and lien rights against the land. If the unregulated Global Entities were actually assuming the risk, they would fund the plant themselves, rather than extract monies from the landowners. Indeed, if

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development does not occur, the unregulated Global Entities simply keep the ICFA fees as pure profit, far from "taking the hit." (Motion to Dismiss, p. 10, ll. 9-10.)

Moreover, agreements that shield the utilities from risk do not necessarily shield the ratepayers from risk. Commission rules and policy provide that funding infrastructure through refundable Advances shields ratepayers from risk through minimizing rate base if projects develop slower than expected. Under the Respondents' ICFA scheme, infrastructure is constructed and owned by SCWC and PVUC. It is either funded through Advances, which in the case of ICFAs only applies to onsite facilities, or through equity funding, which in the case of ICFAs applies to all offsite infrastructure. The offsite infrastructure is in rate base, whether installed to serve a specific project that moves quickly to completion or for one that is stalled or is not built at all. In either event, the risk of development has been shifted to the utilities, which will expect their current ratepayers to provide a return on the ICFA-funded infrastructure regardless of the development's state of buildout and occupancy. Rather than shielding the ratepayers from risk, the ICFAs instead are designed to shield the unregulated Global Entities from Commission review, resulting in greater risk to ratepayers contrary to the public interest.

Respondents also contend that the Commission's Staff has expressed concerns about excessive Contributions or Advances leaving utilities with little or no rate base. Motion at p. 10, ll. 12-21. Not only is there nothing in the Motion to Dismiss supporting this assertion, having utilities funded through unregulated fees collected through schemes such as the ICFAs and then laundering those fees into the utilities as equity-funded rate base is certainly inimical to the public interest.

Respondents' description of Contributions and Advances as "easy money," p. 10, l. 14, more properly describes the unregulated fees being pocketed by the Global Entities under the ICFA scheme. The Commission has long recognized Contributions and Advances as being in the public interest. Global has evaded Commission oversight of the ICFAs, and their impacts have never been evaluated or approved by the Commission. ICFA fees are not

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recorded as Contributions or Advances on the regulated utilities' books because these fees have been fashioned to be paid directly to the holding company and not the regulated utility. Had SCWC or PVUC entered into these agreements directly with the landowners for the installation of off-site infrastructure, the fees would be recorded as Advances or Contributions and deducted from their rate bases. The ICFAs scheme is an attempt to shield the fees from regulation, and it is appropriate for the Commission to order Respondents to show cause why these fees should not be treated as Contributions by SCWC and PVUC. In any event, this demonstrates the urgent need for the Commission to investigate the Global Entities' scheme to impose ICFAs fees without Commission oversight or approval.

The Global Entities also contend that the ICFA fees would be used to pay for acquisitions and consolidation of small water systems, basically admitting that they are overcharging fees to develop a war chest to raid other companies. Motion at pp. 10-11. Without the Commission's regulatory oversight, nobody but the Global Entities "fox" guards the ICFA "henhouse" in Respondents' world, and no check is in place to determine if the ICFA fee is cost-based, reasonable, legitimate or protective of the public interest. The ICFA fees *do* impact ratepayers. Much discovery and investigation needs to be undertaken as to what the fees are actually based on and how the Global Entities have used and intend to use them in the future.

In short, the ICFAs raise numerous factual questions affecting important public policy and public interest issues which the Commission needs to have an opportunity to address. This is the correct forum to examine them, and the Commission's generic evaluation docket, No. W-00000C-06-0149, which has not yet become active, does not change the urgent need for the Commission to investigate the Global Entities' scheme in this complaint case. Indeed, the Global Entities' reliance on the existence of that docket does not grant them immunity from the Commission's regulatory authority, but instead confirms the appropriateness of the Commission's jurisdiction over the "non-traditional financing" issues presented here. RUCO may very well be an appropriate intervener in this docket in

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light of Respondents' conduct, which is inimical to the interests of residential utility customers. But granting Respondents' motion to dismiss at this early stage, before discovery and before the Commission can evaluate and address these issues, would effectively remove the Commission's regulatory limits over the next fee-generating device that entities such as the Respondents may devise.

### B. Respondents' Payoff Agreements With Local Governments Are Also Subject to Commission Scrutiny And Oversight, And Factual Issues Preclude Dismissal Of This Claim At This Early Stage.

As with its ICFAs, Respondents contend that their Memorandums of Understanding ("MOUs") with various municipalities benefit the public interest. However, the MOU between the Global Entities and the City of Casa Grande has yet to be subjected to the Commission's regulatory scrutiny, which ought to occur in this case. Although these MOUs contain "feel good" platitudes and self-laudatory recitals invoking notions of "coordination" and "planning," beneath the surface they actually provide for payoffs of $50 to $100 per lot by Respondents to the City of Casa Grande. These kickbacks are part of the ICFA fees Respondents collect from landowners. Calling these payoff agreements "Public Private Partnerships" is particularly misleading. The MOUs actually provide for the payment of a fee similar to a franchise fee, even for areas outside of the municipal corporate limits. Respondents are shifting these fees to the utilities, and ultimately to ratepayers, since franchise fees are passed through to ratepayers. Although Respondents piously pretend that these agreements are not exclusive, the effects of the agreements force the City to support Respondents' CCN applications and presumably oppose Arizona Water Company's legitimate efforts to serve, all in exchange for a fee paid to the City. Arizona Water Company's allegations are not an "attack" on municipalities, they are a plea for the Commission to investigate the scheme underlying the MOUs to determine how their effects on utilities and the ratepayers are hostile to the public interest. Moreover, Arizona Water Company is proud of its partnering relationship with the City of Casa Grande, which it has served for more than fifty years. Respondents point to isolated past disputes with prior City

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administrators, but seeking judicial direction as to matters of concern are "part of the territory" of serving Pinal County—territory that Respondents have never visited and have no track record whatsoever in serving. If the Global Entities' heavy-handed tactics with landowners and dismissive disregard of the Commission's regulatory authority represents its vision of "a cooperative approach" in meeting the public interest, the situation cries out for Commission review.

As with its ICFAs, the MOUs raise numerous factual questions affecting important public policy and public interest issues which this Commission needs to address. Respondents want to prevent the Commission from investigating and addressing those issues by means of its motion to dismiss, which should be denied.

### C. Arizona Water Company's Formal Complaint Against The Global Entities Is Not A "Rate Related" Matter Under A.R.S. § 40-246(A).

Count Two of Arizona Water Company's formal complaint seeks Commission review of Respondents' illegal financing and fee schemes, which are part and parcel of the larger issues raised in the complaint concerning the Global Entities' questionable conduct and business practices. These issues are not related to a rate case seeking Commission review "as to the reasonableness of any rates or charges. . . ." as set forth in A.R.S. § 40-246(A), requiring the signatures of mayors or customers. Arizona Water Company is not challenging the "reasonableness" of rates the Commission must first approve before they can be charged by the Global Entities, but rather whether the unregulated Global Entities should be allowed to make any charges at all under their ICFAs and MOUs and bind their underlying utilities without first obtaining Commission approval. This case is not a traditional rate case; it is a more sweeping investigation into the legality of the fees and charges themselves, and whether the Global Entities may evade the Commission's regulatory authority.

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## IV. CONCERNING COUNT THREE, RESPONDENTS HAVE NO UNRESTRICTED RIGHT, UNDER THE FIRST AMENDMENT OR OTHERWISE, TO SOLICIT ARIZONA WATER COMPANY'S CUSTOMERS FOR WATER UTILITY SERVICE.

### A. The Commission Has The Authority And Obligation To Prohibit Unregulated Public Service Corporations From Soliciting Utility Customers.

As is evident from its formal complaint, Arizona Water Company is not seeking to exclude other properly certificated and regulated public service corporations from serving in Pinal County. However, if a utility seeks to invade the existing CCN or logical service territory of an existing utility like Arizona Water Company that is ready, willing and able to provide such service already, the Commission should reject and restrain such efforts which are adverse to longstanding CCNs and, therefore, adverse to the public interest.[7] The problem with the Global Entities' overall scheme is that its ICFAs and MOUs attempt to completely avoid and disregard Commission scrutiny. While its motion tries to mouth the public interest, its actions do violence to the public interest and seek to evade Commission regulatory oversight and authority over these issues. As the "first in the field" doctrine dictates, the Commission can and should reject the Global Entities' attempts to invade the existing CCN of Arizona Water Company which is ready, willing *and able* to provide utility service to newly developing areas within, adjacent to, or near Arizona Water Company's existing CCN.

Respondents' arguments concerning the primacy of the so-called free enterprise system and "competition" in the fixed utility field ignore the fact that longstanding Arizona

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[7] In introducing this argument in Section I of their motion, Respondents state that they should have free reign to interfere with Arizona Water Company's customers outside of Commission oversight because "Global can work with landowners to find some accommodation that is acceptable to both AWC and Global," p. 3, ll.1-2, as if a silent conspiracy between them to evade Commission authority is perfectly acceptable. But no amount of improper fees or payments will buy Arizona Water Company's cooperation in such a scheme; Arizona Water Company's formal complaint raises issues of fundamental respect for the jurisdiction and authority of the Commission and its powers, and is not an invitation to see who can "work with landowners" to find "accommodations" that are acceptable to the parties, but violate Arizona law.

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public policy respecting public service corporations is one of *a regulated monopoly* as opposed to *free-wheeling competition*. *See James P. Paul Water Company v. Arizona Corporation Commission*, 137 Ariz. 426, 429, 671 P.2d 404, 407 (1983)("Arizona's public policy respecting public service corporations, such as water companies, is one of regulated monopoly over free-wheeling competition"). Marshall Trimble may decry monopolies and trusts during the era of early statehood, but this case instead involves a regulated utility which constitutionally must be protected from operators (like the Global Entities) which interfere with a long—established water utility like Arizona Water Company.

### B. The Relief Sought By Arizona Water Company Does Not Impact Protected "Speech," And The Commission Has The Authority And Obligation To Scrutinize Whether Conduct By A Public Service Corporation Is Deceptive Or Illegal.

Asking the Commission to investigate Respondents' conduct and to fashion appropriate remedies is no more a First Amendment violation than requiring an unregistered securities salesman to show cause why he should not cease and desist from making illegal sales, or requiring a maverick provider of telephone service or natural gas to come before the Commission and show cause why they should not be licensed and regulated. Respondents largely misstate and exaggerate the relief sought by Arizona Water Company in its formal complaint; the relief sought speaks for itself and in no way implicates First Amendment protections.

First, the relief Arizona Water Company seeks does not impact "speech." The United States Supreme Court has rejected "the view that an apparently limitless variety of conduct can be labeled 'speech' . . . ." *United States v. O'Brien*, 391 U.S. 367, 376 (1968). Conduct must be "sufficiently imbued with elements of communication to fall within the scope of the First Amendment . . . ." *Spence v. Washington*, 418 U.S. 405, 409 (1974).

In *Central Hudson Gas & Electric Corp. v. Public Serv. Comm'n of New York*, an electrical utility brought suit to challenge the constitutionality of a regulation prohibiting all advertising by the utility. 447 U.S. 557 (1980). The Court found that the state's interest in preventing inequities in utility rates and energy conservation was not sufficient to support a

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complete suppression of speech via advertising. Id. at 569-573. In contrast, Arizona Water Company's formal complaint does not ask the Commission to prevent the Global Entities from speaking with its own customers or advertising its duly authorized services; it asks the Commission to order the Global Entities to come forward to show cause as to why they should not be prohibited from interfering with and entering into illegal contracts with Arizona Water Company's present or future customers in its existing CCN or logical service territory.

Second, even if the Global Entities' conduct might be protected "speech," which it is not, the Global Entities' deceptions and misrepresentations identified in Arizona Water Company's complaint are not protected under the First Amendment in any event. It is well-established that an individual's right to free speech is not absolute. *See Chaplinsky v. New Hampshire*, 315 U.S. 568, 571 (1942). Under the First Amendment, the government may restrict commercial speech when it is unlawful or misleading. *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 554 (2001). The U.S. Supreme Court has held that commercial messages that deceive the public or propose an illegal transaction forfeit First Amendment protection. *State v. Tolleson*, 160 Ariz. 385, 389-90, 773 P.2d 490, 494-95 (App. 1989) (citing *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 638 (1985)).

In this context, Respondents' arguments that "Nothing prevents Global from encouraging or supporting" requests by Arizona Water Company's "potential customers [to] petition the Commission to be deleted from the AWC CCN" (p. 18. ll. 23-24, 27) is especially egregious. Moreover, Respondents' assertions that "AWC does not allege that Global has actually attempted to serve anyone in AWC's CCN area" and "Nor does AWC allege that Global has requested a CCN for any of AWC's territory," (p. 19, ll. 3-4) is patently false, and knowingly so.[8] *See* Complaint, p. 3, l. 10-23. In addition, Respondents

[8] The Global Entities clearly seek to serve utility customers within Arizona Water Company's CCN areas, as demonstrated by a recently recorded ICFA between the Global Entities and Parker Estates, L.L.C., a landowner within Arizona Water Company's Stanfield CCN area. *See* Exhibit A. Moreover, the Global Entities have

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well know from their failed attempts to intervene in recent Arizona Water Company CCN extension proceedings for its Casa Grande system that they are attempting to do both. The Global Entities' blunt attacks on Arizona Water Company's customers and its CCN deserve Commission investigation and review, and are not excused by their misguided efforts to shield their actions by cloaking them with the right of free speech.

Finally, even though the First Amendment analysis is inappropriate for the relief Arizona Water Company seeks, proper analysis of the issue if it were relevant is necessarily fact-intensive, precluding dismissal at this stage under the principles set forth above.

## V. CONCLUSION.

For the foregoing reasons, Respondents' Motion to Dismiss should be denied in its entirety, and this matter should be set for an order to show cause hearing as requested in Arizona Water Company's formal complaint.

RESPECTFULLY SUBMITTED this 15th day of May, 2006.

BRYAN CAVE LLP

By _____

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Two N. Central Avenue, Suite 2200
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Attorneys for Arizona Water Company

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also sought a CCN for portions of Arizona Water Company's Casa Grande CCN territory, as noted in the April 28, 2006 insufficiency letter from the Commission's Staff. *See* Exhibit B, paragraph 9 (noting that SCWC seeks a CCN for T7S, R3E [sic], Section 12, W ½ which "is certificated to Arizona Water". The actual area of the overlap is T7S, R*4*E (not R3E), reflecting that the Staff letter contains a typographical error as to the location of the overlap only).

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**ORIGINAL** and 13 **COPIES** of the foregoing filed this 15th day of May, 2006 with:

Docket Control Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

**COPY** of the foregoing hand-delivered/ mailed this 15th day of May, 2006 to:

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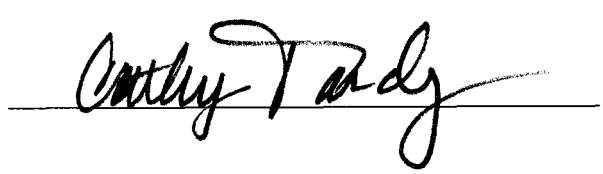

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# EXHIBIT A

(44)

WHEN RECORDED RETURN TO:
Global Water Resources, LLC
22601 N. 19th Avenue
Suite 210
Phoenix, Arizona 85027

OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLE

DATE/TIME: 02/14/06 1635
FEE: $53.00
PAGES: 44
FEE NUMBER: 2006-022206

# INFRASTRUCTURE COORDINATION AND FINANCE AGREEMENT

**THIS INFRASTRUCTURE COORDINATION AND FINANCE AGREEMENT** (this "Agreement") is entered into as of August 10, 2005 between Global Water Resources, LLC, a Delaware limited liability company ("Coordinator") and Parker Estates, L.L.C., an Arizona limited liability company ("Landowner").

## RECITALS

A. Coordinator is engaged in the business of, among other things, providing services or benefits to landowners, such as: (i) developing master utility plans for services including natural gas, electricity, cable television, Internet, intranet, and telecommunications; (ii) providing construction services for water and wastewater treatment facilities, and (iii) providing financing for the provision of infrastructure in advance of and with no guarantee of customer connections.

B. Coordinator is the owner of Santa Cruz Water Company, LLC ("SCW") and Palo Verde Utilities Company, LLC ("PVU") and provides equity for its subsidiaries' capital improvements.

C. SCW and PVU are Arizona public service corporations. SCW and PVU have been issued certificates of convenience and necessity ("CC&N") by the Arizona Corporation Commission ("ACC") to provide water and wastewater services (collectively the "Utility Services"), respectively in designated geographic areas within the State of Arizona.

D. Landowner is in the process of entitling and/or developing certain real property, as more fully described on Exhibit A hereto (the "Land") and, in connection therewith, desires (i) to engage Coordinator to provide various services, including but not limited to arranging and coordinating for the Landowner the provision of Utility Services by SCW and PVU with respect to the Land, and (ii) work with SCW and PVU to include the Land as part of a CC&N service area expansion for SCW and PVU, on the terms and conditions hereinafter set forth. Landowner may entitle and sell the land in multiple phases to entities for future development. Through Coordinator, Landowner has requested water and wastewater services from SCW and PVU respectively; and, SCW and PVU have agreed to provide such services to Landowner. Coordinator shall use good faith efforts to provide "will serve" letters from SCW and PVU for Landowner and file for CC&N approval within 21 days of execution of this Agreement.

E. The parties acknowledge that the expansion of the CC&N may not be finalized until such time as the appropriate Arizona Department of Water Resources ("ADWR"), Arizona Department of Environmental Quality ("ADEQ") and Central Arizona Association of Governments ("CAAG") permits and approvals are in place.

F. The parties acknowledge that it is a requirement of this Agreement for the Landowner to accept and utilize reclaimed water for purposes of irrigation for the peak and off peak periods.

G. The parties recognize and acknowledge that this Agreement is a financing and coordinating agreement only. The fees contemplated in this Agreement represent an approximation of the carrying costs associated with interest and capitalized interest associated with the financing of infrastructure for the benefit of the Landowner, until such time as the rates associated from the provision of services within the areas to be served as contemplated by this Agreement generate sufficient revenue to carry the on going carrying costs for this infrastructure. Nothing in this Agreement should be construed as a payment of principal, a contribution or advance to SCW and PVU, and will bear no repayment of any kind or nature in the future.

## AGREEMENT

**NOW, THEREFORE,** for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Obligations of Coordinator. Upon execution of this Agreement, Coordinator shall undertake good faith efforts to facilitate, arrange and/or coordinate with SCW and PVU, as necessary, to provide Utility Services to Landowner, including without limitation, obtaining all necessary permits and approvals from the ACC, ADWR, ADEQ and CAAG to expand the CC&N of SCW and PVU to include the Land. Coordinator shall make good faith efforts to cause SCW and PVU to provide water souce and storage, as well as wastewater treatment, Utility Services to Landowner for the Land. Water and wastewater lines will be constructed to the property line of the Land and reclaimed water lines will be constructed to a water storage facility within the Land, at locations to be designated by Coordinator collectively (the "Delivery Point") in consultation with Landowner. In addition to other administrative services to be provided by Coordinator, Coordinator shall undertake good faith efforts to coordinate and provide access to utility agreements currently in place to benefit the Land. These utility agreements may include the provision of natural gas, electricity, telephone, cable television, Internet, and intranet services. Coordinator will use its good faith efforts to facilitate modifications to existing utility agreements (including agreements with utility service providers other than with SCW and PVU) to include the Land within the service areas of other utility service providers. Landowner acknowledges and agrees that nothing in this Agreement is intended to prohibit Coordinator, its successors or assigns or their respective subsidiaries or affiliates from investing in or owning companies formed for purposes of providing any one or more of the utility services contemplated in this Agreement. Landowner shall not be obligated to enter into any agreements with Coordinator, its successors or assigns, or their respective subsidiaries or affiliates to accept any utility services without Landowner's written approval, in Landowner's sole discretion.

2. Coordination with SCW and PVU. Coordinator shall make good faith efforts to arrange and obtain for Landowner the services from SCW and PVU, more fully described on Exhibit C hereto, subject to obtaining the applicable regulatory approvals. Landowner or any successor to Landowner desiring the delivery of Utility Services to any portion of the Land must enter into separate Water Facilities Extension and Wastewater Facilities Extension Agreements (the "Extension Agreements") with SCW and PVU, respectively, at the time any portion of the Land has received final plat approval from Pinal County and the approved plat has been recorded

("Plat Approval"). The Extension Agreements shall be in the forms attached hereto as Exhibits D and E.

3. Obligations of Landowner. Landowner agrees to cooperate with Coordinator as reasonably requested by Coordinator and agrees to provide all information and documentation about the Land reasonably necessary for Coordinator to comply with its obligations under this Agreement. In addition, Landowner agrees to grant to SCW and/or PVU, as the case may be, all necessary easements and rights of way for the construction and installation and subsequent operation, maintenance and repair of the Utility Services. Such easements and rights of way shall be of adequate size, location and configuration so as to allow SCW and PVU ready and all weather access to all facilities for maintenance and repairs and other activities reasonably necessary to provide safe and reliable water and wastewater Utility Services. In addition, as and when Landowner is no longer utilizing any portion of the Land for farming activities requiring use of irrigation water and one or more Water Facilities Extension Agreement has been entered into with respect to the Land, Landowner shall thereafter provide and transfer to SCW any and all water rights, which are owned by Landowner at the time of the signing of this Agreement, including, but not limited to, Grandfathered Irrigation Rights, Type I rights and /or Type II rights which run with or relate to the Land and which Coordinator determines, in its sole discretion, to be useful. Further, as and when Landowner is no longer utilizing any portion of the Land for farming activities requiring use of irrigation water and one or more Water Facilities Extension Agreement has been entered into with respect to the Land, Landowner shall thereafter transfer and convey to SCW at no cost to SCW (or Coordinator) any wells on the Land that SCW, in its sole discretion, deems useful for SCW, whether operational, abandoned, agricultural or otherwise. In addition, if SCW identifies well sites on the Land that SCW, in its sole discretion, deems useful for SCW, Landowner shall cause such well sites to be identified on the Plat Approval and dedicated to SCW in fee, free of all liens, claims and encumbrances of any kind or nature whatsoever; provided that the well site location is not located within areas identified in the current or any approved preliminary plans as areas to be used for entrances, entry monumentation or public roadways. Any well sites not transferred to SCW are to be decommissioned at the Landowner's expense. Both parties acknowledge that until effluent is available for the Land, groundwater from wells on the Land will be utilized. The Coordinator will use its reasonable efforts to obtain an Interim Use Permit with ADWR, on behalf of the Landowner or the Landowner's homeowner association, to allow the use of groundwater until effluent is available. Specific reasonable and identifiable costs associated with completing the Interim Use Permit will be reimbursed by Landowner to Coordinator subject to written documentation of such costs. Such costs may include engineering plans prepared by

Landowner's engineering firm for the benefit of ADWR subject to Landowner's prior written notice. As necessary and in SCW's sole discretion, Landowner will provide for the deeding of up to two (2) acres of land per 640 acres of land, free and clear of all liens, claims or encumbrances (except as otherwise expressly agreed to by SCW) to SCW for the use of future water pumping, treatment and storage facilities in the general location identified on Exhibit B attached hereto.

4. Payment Obligations. Landowner, or its assigns in title and/or successors in title, shall pay Coordinator an interest and financing fee as full and final compensation to the Coordinator in consideration for its services and performance of its covenants and agreements contained in the Agreement, the sum of $3,500.00 per equivalent dwelling unit ("EDU") in the Land (the "Landowner Payment."). The portion of the Landowner Payment not paid concurrently with the execution of this Agreement shall be adjusted upward based on a CPI Factor, which is defined as the Consumer Price Index – United States City Average – for All Urban Consumers – All Items published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), with the Index for the month of January 2006 being treated as the base Index, plus two percent (2%). If the Index is discontinued or revised during the term of this Agreement, such other government index or computation with which it is replaced shall be utilized, and modified as necessary, to obtain substantially the same result as would be obtained if the Index had not been so discontinued or revised. For example, if the Landowner Payment was due in February 2007 and the most current available Index was 187.3 and the Index for January 2006 was 182.5, the unpaid Landowner Payment per EDU would be calculated as follows: $3,500 x 187.3/182.5 x 1.02 = $3,664. For the purposes of this Section 4, the number of EDUs within the Land shall be calculated as follows: (i) each single family residential lot included in the Plat Approval shall constitute one (1) EDU and (ii) each gross acre of commercial or industrial property included in the Plat Approval shall constitute four point eight (4.8) EDUs. If the payment to be made by Landowner pursuant to this Section 4 is due and owing pursuant to clause (ii) above prior to the Plat Approval, Coordinator shall reasonably calculate the Landowner Payment and Landowner shall make an initial payment based upon Coordinator's reasonable calculation. Following each Plat Approval, Landowner (and any successor or assign in title to any interest in the Property) and Coordinator shall reconcile the amount paid pursuant to the preceding sentence with the actual Landowner Payment due and Landowner, and/or any successor or assign in title to any interest in the Property, as applicable, shall pay to Coordinator or Coordinator shall pay to Landowner and/or any successor or assign in title to any interest in the Property, as applicable, as the case may be, the amount necessary to reconcile such payment.

The Landowner Payment for residential lots is payable upon the earlier of: (i) within 30 days after achieving Plat Approval for any portion of the Land retained by Landowner, (ii) upon Plat Approval for any portion of the Land conveyed by Landowner to an unaffiliated third party prior to Plat Approval, (iii) upon conveyance by Landowner to an unaffiliated third party of any portion of the Land that has achieved Plat Approval, but for which no final plat has been recorded, or (iv) recordation of a final plat on any portion of the Land retained by Landowner.

The Landowner Payment for commercial and industrial property is paid as land is subjected to a final approved site plan. The parties acknowledge that additional fees will be billed to the commercial and industrial end user based upon the ultimate use of the land and fixtures thereon.

Fees payable to SCW and PVU, and reimbursement for certain costs and expenses incurred by Landowner with respect to the obtaining of Utility Services, are not the subject of this Agreement and shall be paid and reimbursed to the appropriate parties in accordance with the Extension Agreements.

5. No Partnership. Coordinator is acting as an independent contractor pursuant to this Agreement. Nothing in this Agreement shall be interpreted or construed (i) to create an association, agency relationship, joint venture, or partnership among the parties or to impose any partnership obligation or liability upon either party, or (ii) to prohibit or limit the ability of Coordinator to enter into similar or identical agreements with other landowners, even if the activities of such landowners may be deemed to be in competition with the activities of Landowner.

6. Default.

(a) Landowner shall be deemed to be in material default under this Agreement upon the expiration of ten (10) days, as to monetary defaults, and thirty (30) days, as to non-monetary defaults, following receipt of written notice from Coordinator specifying the particulars in which a default is claimed unless, prior to expiration of the applicable grace period (ten (10) days or thirty (30) days, as the case may be), such default has been cured. A default by Landowner under this Agreement shall constitute a default by Landowner under the Extension Agreements and a default by Landowner under the Extension Agreement(s) shall constitute a default under this Agreement.

(b) In the event Landowner is in default under this Agreement, the provisions

hereof may be enforced by any remedy permitted by law for specific performance, injunction, or other equitable remedies in addition to any other remedy available at law or in equity In this regard, in the event Landowner fails to pay any amount as and when due (including the Landowner Payment), which failure is not cured within ten (10) days after notice thereof in accordance with the provisions of Section 6(a) above, such delinquent amounts shall bear interest at the rate of fifteen percent (15%) per annum from the due date until paid. In addition, to the extent such sums remain unpaid following such ten (10) day period, Coordinator may claim a contractual lien for such sum, together with interest thereon as set forth above, which may be foreclosed against only that portion of the Land owned by the defaulting landowner in the manner prescribed by law for the foreclosure of realty mortgages; Coordinator agrees that as and when portions of the Property are sold, the obligations hereunder shall be bifurcated based on the land area sold and each landowner shall be solely (and not jointly) responsible for all sums owed with respect to the land areas that it owns and shall not have any obligation or liability for the failure of any other owner of any portion of the Land.

(c) Subject to the limitations described in the last sentence of the subsection (b) above, amounts owed but not paid when due by Landowner shall be a lien against the Land that the parties agree shall relate back to the date upon which an executed copy of this Agreement is recorded in the Pinal County Recorders Office, along with a document entitled Preliminary Notice of Contractual Lien which sets forth:

i. The name of the lien claimant;

ii. the name of the party or then owner of the property or interest against which the lien is claimed;

iii. and a description of the property against which the lien is claimed.

(d) The lien shall take effect only upon recordation of a claim of contractual lien as described below in the office of the Pinal County Recorder by Coordinator, and shall relate back to the date when the Preliminary Notice of Contractual Lien and executed copy of the Agreement were recorded, as set forth in paragraph (c) above. Coordinator shall give written notice of any such lien. The Notice and Claim of Contractual Lien shall include the following:

(i) The name of the lien claimant.

(ii) The name of the party or then owner of the property or interest against which the lien is claimed.

(iii) A description of the property against which the lien is claimed.

(iv) A description of the default or breach that gives rise to the claim of lien and a statement itemizing the amount of the claim.

(v) A statement that the lien is claimed pursuant to the provisions of this Agreement and reciting the date of recordation and recorder's document number of this Agreement.

(vi) The notice shall be acknowledged, and after recordation, a copy shall be given to the person against whose property the lien is claimed in any manner prescribed under Section 15 of this Agreement. The lien may be enforced in any manner allowed by law, including without limitation, by an action to foreclose a mortgage or mechanic's lien under the applicable provisions of the laws of the State of Arizona.

(e) If the Landowner posts either (a) a bond executed by a fiscally sound corporate surety licensed to do business in the State of Arizona, or (b) an irrevocable letter of credit from a reputable financial institution licensed to do business in the State of Arizona reasonably acceptable to Coordinator, which bond or letter of credit (i) names Coordinator as the principal or payee and is in form satisfactory to Coordinator, (ii) is in the amount of one and one-half (1-½) times the claim of lien, and (iii) unconditionally provides that it may be drawn on by Coordinator in the event of a final judgment entered by a court of competent jurisdiction in favor of Coordinator, then Coordinator shall record a release of the lien or take such action as may be reasonably required by a title insurance company requested to furnish a policy of title insurance on such property to delete the lien as an exception thereto. Landowner shall post the bond or letter of credit by delivery of same to Coordinator. All costs and expenses to obtain the bond or letter of credit, and all costs and expenses incurred by Coordinator, shall be borne by Landowner, unless Landowner is the prevailing party in any litigation challenging the claimed lien.

7. Non Issuance of CC&N Expansion. In the event that Coordinator, SCW and PVU are unable to obtain all of the necessary approvals from the ACC and ADEQ within eighteen (18) months of the Land's inclusion in the expansion application into a CC&N, or if such

approvals are reversed or ultimately invalidated on appeal, which would allow for the Land to be included in the CC&N expansions of SCW and PVU, then the Landowner or Coordinator at either party's option may terminate this Agreement without recourse to either party. In the event of termination of the Agreement, Coordinator shall remove or cause to be removed any registration of this Agreement with Pinal County and waive any lien rights it may have under this Agreement.

8. Attorneys' Fees. If any dispute arises out of the subject matter of this Agreement, the prevailing party in such dispute shall be entitled to recover from the other party its costs and expenses (including reasonable attorney's fees) incurred in litigating or otherwise resolving such dispute. The parties' obligations under this Section shall survive the closing under this Agreement.

9. Applicable Law; Venue; Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, notwithstanding any Arizona or other conflict-of-law provisions to the contrary. The parties consent to jurisdiction for purposes of this Agreement in the State of Arizona, and agree that Maricopa County, Arizona, shall be proper venue for any action brought with respect to this Agreement.

10. Interpretation. The language in all parts of this Agreement shall in all cases, be construed as a whole according to its fair meaning and not strictly for nor against any party. The section headings in this Agreement are for convenience only and are not to be construed as a part hereof. The parties agree that each party has reviewed this Agreement and has had the opportunity to have counsel review the same and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or any exhibits thereto. Except where specifically provided to the contrary, when used in this Agreement, the term "including" shall mean without limitation by reason of enumeration. All pronouns and any variations thereof shall be deemed to refer to masculine, feminine or neuter, singular or plural, as the identity of the person(s) or entity(ies) may require.

11. Counterparts. This Agreement shall be effective upon execution by all parties hereto and may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. All counterparts shall be construed together and shall constitute one agreement.

12. Entire Agreement. This Agreement constitutes the entire integrated agreement among the parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, representations, and undertakings of the parties with respect to such subject matter. This Agreement may not be amended except by a written instrument executed by all parties hereto.

13. Additional Instruments. The parties hereto agree to execute, have acknowledged, and deliver to each other such other documents and instruments as may be reasonably necessary or appropriate to evidence or to carry out the terms of this Assignment.

14. Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity or legality of the remainder of this Agreement.

15. Incorporation by Reference. Every exhibit, schedule and other appendix attached to this Agreement and referred to herein is hereby incorporated in this Agreement by reference.

16. Notices. Any notice, payment, demand or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be delivered personally to the party to whom the same is directed, or sent by registered or certified mail, return receipt requested, addressed to the addresses set forth on the signature page hereto. Any such notice shall be deemed to be delivered, given and received for all purposes as of the date so delivered if delivered personally, or three business days after the time when the same was deposited in a regularly maintained receptacle for the deposit of United States mail, if sent by registered or certified mail, postage and charges prepaid, or if given by any other method, upon actual receipt; provided that notwithstanding the foregoing, notice of any change of address shall be effective only upon actual receipt of such notice.

17. Binding Effect; Partial Releases. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties. This Agreement constitutes a covenant running with the land, shall be binding upon the Land for the benefit of Coordinator, its successors and assigns and any person acquiring any portion of the Land, upon acquisition thereof, shall be deemed to have assumed the obligations of Landowner arising from this Agreement with respect only to that portion of the Land acquired without the necessity for the execution of any separate instrument. If phases and/or parcels within the Land are sold individually, Coordinator will ensure that at such time as the Landowner Payment has been paid

in full for that particular phase and/or parcel, Coordinator shall release this Agreement of record from that particular phase and/or parcel, without releasing the Agreement from any other portion of the Land for which the Landowner Payment has not been paid in full. It is the intent of this Agreement to release that portion of any lien which relates to parcels and or plats that are paid in full.

**[Signatures are on the following page.]**

**IN WITNESS WHEREOF**, the parties have entered into this Agreement as of the date first above written.

**COORDINATOR:**
Global Water Resources, LLC
a Delaware Limited Liability Company

By: _____
Cindy M. Liles
Vice-President

**LANDOWNER:**
Parker Estates, L.L.C.
an Arizona Limited Liability Company

By: _____
N. Kelly House, President
El Dorado Holdings, Inc.
Its: Administrative Agent

STATE OF ARIZONA )
) ss.
County of Maricopa )

On December 28, 2005, before me, Jennie L Critchfield, a Notary Public in and for said state, personally appeared Cindy M. Liles, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument, the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Jennie L Critchfield
Notary Public - Arizona
Maricopa County
My Commission Expires
April 18, 2009

Jennie L Critchfield
Notary Public in and for said State

My Commission Expires:

4/18/09

STATE OF ARIZONA )
) ss.
County of Maricopa )

On August 10, 2005, before me, Sharlene N. Rice, a Notary Public in and for said state, personally appeared N. Kelly Hoose, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument, the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public State of Arizona
Maricopa County
Sharlene M. Starr
Expires February 04, 2006

Sharlene N. Rice
Notary Public in and for said State

My Commission Expires:

February 4, 2008

1696810/30135.003

EXHIBIT A

INFRASTRUCTURE COORDINATION AGREEMENT

LEGAL DESCRIPTION OF LAND

EXHIBIT "A"

Legal Description of Property:

The Northeast quarter of the Northeast quarter of Section 12, Township 6 South, Range 3 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona, and

Parcel No. 1:

The South half of Section 12, Township 6 South, Range 3 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona.

EXCEPT the East half of the Southeast quarter of said Section 12.

Parcel No. 2:

The North half of Section 12, Township 6 South, Range 3 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona.

EXCEPT the Northeast quarter of the Northeast quarter of said Section 12.

Parcel No. 3:

The Southwest quarter of the Southwest quarter of the Northwest quarter Section 13, Township 6 South, Range 3 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona.

Parcel No. 4:

The Southeast quarter of the Southwest quarter of the Northwest quarter Section 13, Township 6 South, Range 3 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona.

Parcel No. 5:

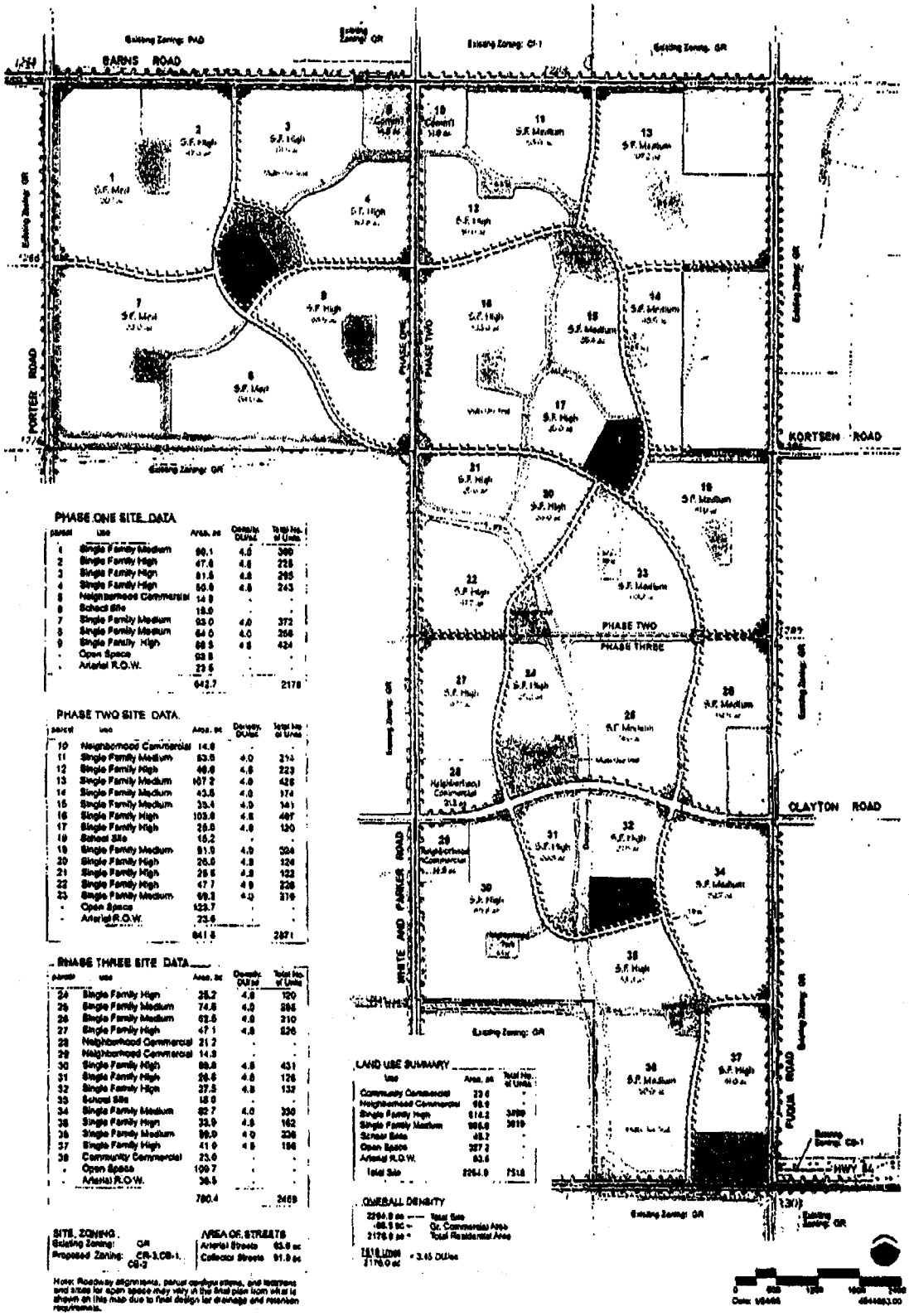
The North half of Section 13, Township 6 South, Range 3 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona.

EXCEPT the South half of the Southwest quarter of the Northwest quarter of said Section 13.

EXHIBIT B

INFRASTRUCTURE COORDINATION AGREEMENT

DEVELOPMENT SITE PLAN




**PHASE ONE SITE DATA**

| parcel | use | Area, ac | Density DU/AC | Total No. of Units |
|---|---|---|---|---|
| 1 | Single Family Medium | 90.1 | 4.0 | 360 |
| 2 | Single Family High | 47.8 | 4.8 | 228 |
| 3 | Single Family High | 61.5 | 4.8 | 295 |
| 4 | Single Family High | 50.8 | 4.8 | 243 |
| 5 | Neighborhood Commercial | 14.9 | - | - |
| 6 | School Site | 18.0 | - | - |
| 7 | Single Family Medium | 93.0 | 4.0 | 372 |
| 8 | Single Family Medium | 64.0 | 4.0 | 256 |
| 9 | Single Family High | 88.5 | 4.8 | 424 |
| - | Open Space | 53.8 | - | - |
| - | Arterial R.O.W. | 23.5 | - | - |
| | | 643.7 | | 2178 |

**PHASE TWO SITE DATA**

| parcel | use | Area, ac | Density DU/AC | Total No. of Units |
|---|---|---|---|---|
| 10 | Neighborhood Commercial | 14.8 | - | - |
| 11 | Single Family Medium | 53.8 | 4.0 | 214 |
| 12 | Single Family High | 46.8 | 4.8 | 223 |
| 13 | Single Family Medium | 107.2 | 4.0 | 428 |
| 14 | Single Family Medium | 43.6 | 4.0 | 174 |
| 15 | Single Family Medium | 35.4 | 4.0 | 141 |
| 16 | Single Family High | 103.8 | 4.8 | 497 |
| 17 | Single Family High | 26.8 | 4.8 | 130 |
| 18 | School Site | 18.2 | - | - |
| 19 | Single Family Medium | 81.0 | 4.0 | 324 |
| 20 | Single Family High | 26.0 | 4.8 | 124 |
| 21 | Single Family High | 25.6 | 4.8 | 122 |
| 22 | Single Family High | 47.7 | 4.8 | 228 |
| 23 | Single Family Medium | 69.3 | 4.0 | 276 |
| - | Open Space | 122.7 | - | - |
| - | Arterial R.O.W. | 23.6 | - | - |
| | | 841.8 | | 2871 |

**PHASE THREE SITE DATA**

| parcel | use | Area, ac | Density DU/AC | Total No. of Units |
|---|---|---|---|---|
| 24 | Single Family High | 25.2 | 4.8 | 120 |
| 25 | Single Family Medium | 74.8 | 4.0 | 295 |
| 26 | Single Family Medium | 62.6 | 4.0 | 210 |
| 27 | Single Family High | 47.1 | 4.8 | 226 |
| 28 | Neighborhood Commercial | 21.2 | - | - |
| 29 | Neighborhood Commercial | 14.8 | - | - |
| 30 | Single Family High | 89.8 | 4.8 | 431 |
| 31 | Single Family High | 26.6 | 4.8 | 126 |
| 32 | Single Family High | 27.5 | 4.8 | 132 |
| 33 | School Site | 18.0 | - | - |
| 34 | Single Family Medium | 82.7 | 4.0 | 330 |
| 35 | Single Family High | 33.9 | 4.8 | 162 |
| 36 | Single Family Medium | 56.9 | 4.0 | 228 |
| 37 | Single Family High | 41.9 | 4.8 | 196 |
| 38 | Community Commercial | 23.6 | - | - |
| - | Open Space | 109.7 | - | - |
| - | Arterial R.O.W. | 36.5 | - | - |
| | | 780.4 | | 2469 |

**LAND USE SUMMARY**

| Use | Area, ac | Total No. of Units |
|---|---|---|
| Community Commercial | 23.6 | - |
| Neighborhood Commercial | 65.0 | - |
| Single Family High | 614.2 | 2899 |
| Single Family Medium | 995.8 | 3819 |
| School Sites | 45.2 | - |
| Open Space | 327.2 | - |
| Arterial R.O.W. | 83.6 | - |
| Total Site | 2254.9 | 7518 |

**OVERALL DENSITY**

2254.9 ac — Total Site
- 68.5 ac — Gr. Commercial Area
2176.9 ac = Total Residential Area

7518 Units / 2176.9 ac = 3.45 DU/ac

**SITE ZONING**

Existing Zoning: GR
Proposed Zoning: CB-2, CB-1, CB-2

**AREA OF STREETS**

| | |
|---|---|
| Arterial Streets | 83.6 ac |
| Collector Streets | 91.8 ac |

Note: Roadway alignments, parcel configurations, and locations and sizes for open space may vary at the final plan from what is shown on this map due to final design for drainage and retention requirements.

PREPARED FOR

El Dorado Holdings, Inc.

426 North 44th Street, Suite 100
Phoenix, AZ 85008 (602) 966-3434

A PLANNED AREA DEVELOPMENT FOR

# STANFIELD RANCH

## PHASE TWO – PARKER ESTATES, LLC


W R C DESIGN INC.
3877 N. 7th Street, Suite 350 Phoenix, AZ 85014
Tel: (602) 977-0000 Fax: (602) 977-0000

# EXHIBIT C

# INFRASTRUCTURE COORDINATION AGREEMENT

## DESCRIPTION OF SCW AND PVU SERVICES TO BE COORDINATED BY Coordinator

### SCW

- Expand the existing CC&N water service area to include the Land
- Prepare a master water plan with respect to the Land
- Confirm and or develop sufficient water plant and well source capacity for the Land
- Extend a water distribution main line to the Delivery Point
- Provide will-serve letters to applicable governmental agencies necessary for final plat approvals with a schedule of commitment dates personalized for the Land
- Obtain a 100-year assured water supply and Certificate of Designation required for final plat approvals and Department of Real Estate approvals
- Provide expedited final subdivision plat water improvement plan check and coordination with the Arizona Department of Environmental Quality for Approvals to Construct
- Obtain/Develop facilities extension agreement for construction of infrastructure within the Land (subject to reimbursement)

### PVU

- Expand the existing CC&N wastewater service area to include the Land
- Prepare a master wastewater plan with respect to the Land
- Develop a master reclaimed water treatment, retention, and distribution plan including interim well water supply for lake storage facilities.
- Confirm and or develop sufficient wastewater plant capacity for the Land
- Extend a wastewater collection system main line to the Delivery Point
- Extend a reclaimed water line to a water storage facility within the Land
- Provide all permitting and regulatory approvals including but not limited to an Aquifer Protection Permit and Central Arizona Association of Governments (CAAG) 208 Water Quality Plan as necessary.
- Provide will-serve letters to applicable governmental agencies necessary for final plat approvals with a schedule of commitment dates personalized for the Land
- Provide expedited final subdivision plat wastewater improvement plan check and coordination with the Arizona Department of Environmental Quality for Approvals to Construct
- Obtain/Develop facilities extension agreement for construction of infrastructure within the Land (subject to reimbursement)

EXHIBIT D

INFRASTRUCTURE COORDINATION AGREEMENT

LINE EXTENSION AGREEMENT – SANTA CRUZ WATER COMPANY

**WATER FACILITIES EXTENSION AGREEMENT**

This Agreement is made this _____ day of _____, 200___ by and between SANTA CRUZ WATER COMPANY, L.L.C. an Arizona limited liability company ("Company"), and _____, an _____ ("Developer").

**RECITALS**

A. Developer desires that water utility service be extended to and for its real estate development located in Parcel ___ of _____ consisting of ____ (single family, multifamily, or commercial) lots, in Pinal County within the general vicinity of the City of Maricopa, Arizona (the "Development"). A legal description for the Development is attached hereto as Exhibit "A" and incorporated herein by this reference. The Development is located within Company's Certificate of Convenience and Necessity ("CC&N").

B. Company is a public service corporation as defined in Article XV, Section 2 of the Arizona Constitution which owns and operates water utility facilities and holds a CC&N from the Commission granting Company the exclusive right to provide water utility service within portions of Pinal County, Arizona.

C. Subject to the terms and conditions set forth hereinafter, Developer is willing to construct and install facilities within the Development necessary to extend water utility service to and within the Development, which facilities shall connect to the Company's system as generally shown on the map attached hereto as Exhibit "B." Company is willing to provide water utility

service to the Development in accordance with relevant law, including the rules and regulations of the Commission on the condition that Developer fully and timely perform the obligations and satisfy the conditions and requirements set forth below.

## COVENANTS AND AGREEMENTS

NOW, THEREFORE, in consideration of the following covenants and agreements, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Construction of Facilities**. Developer agrees to construct and install water distribution mains and pipelines, valves, booster stations, hydrants, fittings, service lines and all other related facilities and improvements necessary to provide water utility service to each lot or building within the Development as more particularly described in Exhibit "C" attached hereto and incorporated herein by this reference (referred to hereinafter as the "Facilities"). The Facilities shall connect to the Company's system at the point shown on the approved plans as generally depicted on the map attached hereto as Exhibit "B," and shall be designed and constructed within the Development in a manner which allows the provision of safe and reliable water utility service to each lot therein. Subject to the terms and conditions set forth herein (including, without limitation, Company's rights of plan review and approval and inspection of final construction), Developer shall be responsible for all construction activities associated with the Facilities, and Developer shall be liable for and pay when due all costs, expenses, claims and liabilities associated with the construction and installation of the Facilities.

2. **Construction Standards and Requirements**. The Facilities shall meet and comply with Company's standards and specifications, and all engineering plans and specifications for the Facilities shall be approved by Company and its engineers ("Company's

Engineer"), prior to the commencement of construction. Company and Company's Engineer shall review the plans and specifications and shall provide any requirements or comments as soon as practicable. Developer shall require that its contractor be bound by and conform to the plans and specifications for the Facilities as finally approved by Company. The construction and installation of the Facilities shall be in conformance with the applicable regulations of the Arizona Department of Environmental Quality ("ADEQ"), the Commission, and any other governmental authority having jurisdiction thereover.

3. **Right of Inspection; Corrective Action**. Company shall have the right to have Company's Engineer inspect and test the Facilities at reasonable times during the course of construction as necessary to ensure conformance with plans and specifications. If at any time before the final acceptance by Company of the Facilities any construction, materials or workmanship are found to be defective or deficient in any way, or the Facilities fail to conform to this Agreement, then Company may reject such defective or deficient construction, materials and/or workmanship and require Developer to fully pay for all necessary corrective construction efforts ("Corrective Action"). Company reserves the right to withhold approval and to forbid connection of any defective portion of the Facilities to Company's system unless and until the Facilities have been constructed in accordance with plans and specifications and all applicable regulatory requirements. Further, Developer shall promptly undertake any Corrective Action required to remedy such defects and deficiencies in construction, materials and workmanship upon receipt of notice by Company. The foregoing notwithstanding, Company shall not unreasonably withhold or delay acceptance of the Facilities.

4. **Transfer of Ownership**. Upon completion and approval of the as-built Facilities by Company and any other governmental authority whose approval is required,

Developer shall transfer all right, title and interest in the Facilities to Company via a bill of sale in a form satisfactory to Company. Thereafter, Company shall be the sole owner of the Facilities and be responsible for their operation, maintenance and repair. Company's ownership and responsibility shall include all distribution mains and/or related appurtenances within the Development up to the point of connection to the service line of each customer receiving service. Maintenance and repair of each service line, which lines are not part of the Facilities, shall be Developer's, the Development's or each individual customers' responsibility. All work performed by or on behalf of Developer shall be warranted by Developer for one year from the date of transfer of the Facilities to Company against defects in materials and workmanship. Developer shall also covenant, at the time of transfer, that the Facilities are free and clear of all liens and encumbrances, and unless the time period for filing lien claims has expired, shall provide evidence in the form of lien waivers that all claims of contractors, subcontractors, mechanics and materialmen have been paid and satisfied.

5. **Final As-Built Drawings and Accounting of Construction Costs**. Immediately following completion and approval of the Facilities, Developer shall provide Company with three sets of as-built drawings and specifications for the Facilities and a reproducible copy of such drawings. Developer shall also provide an accounting of the cost of constructing and installing the Facilities, which amount shall be refundable in accordance with paragraph 8, below. Company shall have no obligation to furnish service to the Development or to accept the transfer of the Facilities until Developer has complied with this paragraph.

6. **Easements**. Developer shall be responsible for obtaining all necessary easements and rights-of-way for the construction and installation, and subsequent operation, maintenance and repair of the Facilities. Such easements and rights-of-way shall be of adequate

size, location, and configuration so as to allow Company ready access to the Facilities for maintenance and repairs and other activities necessary to provide safe and reliable water utility service. Such easements and rights-of-way shall be provided to Company by Developer at the same time as Developer transfers ownership of the Facilities pursuant to paragraph 4, above. At the time of transfer, all easements and rights-of-way shall be free of physical encroachments, encumbrances or other obstacles. Company shall have no responsibility to obtain or secure on Developer's behalf any such easements or rights-of-way.

7. **Reimbursement for Engineering and Other Fees and Expenses.** Developer shall also reimburse Company for the costs, expenses and fees, including legal fees and costs that are incurred by Company for preparation of this Agreement, for reviewing and approving the plans and specifications for the Facilities to be constructed by Developer, for inspecting the Facilities during construction and other supervisory activities undertaken by Company, for obtaining any necessary approvals from governmental authorities (collectively the "Administrative Costs"). For such purpose, at the time of the signing of this Agreement, the Developer will pay an advance to the Company of Seven Thousand Five Hundred Dollars ($7,500). Developer shall provide additional advances to Company, as may be requested by Company in writing from time-to-time, to reimburse Company for any additional Administrative Costs it incurs. All amounts paid to Company pursuant to this provision shall constitute advances in aid of construction and be subject to refund pursuant to paragraph 8, below.

8. **Refunds of Advances.** Company shall refund annually to Developer an amount equal to seven percent (7%) of the gross annual revenues received by Company from the provision of water utility service to each bona fide customer within the Development. Such refunds shall be paid by Company on or before the first day of August, commencing in the fourth

calendar year following the calendar year in which title to the Facilities is transferred to and accepted by Company and continuing thereafter in each succeeding calendar year for a total of twenty-two (22) years. No interest shall accrue or be payable on the amounts to be refunded hereunder, and any unpaid balance remaining at the end of such twenty-two year period shall be non-refundable. In no event shall the total amount of the refunds paid by Company hereunder exceed the total amount of all advances made by Developer hereunder. For the purposes of this provision, the total amount of Developer's advances shall be equal to Developer's actual cost of constructing the Facilities and advanced Administrative Costs, less the costs of any corrective action as defined in paragraph 3 above, the costs of curing any defects arising during the warranty period, as provided herein, and the costs of any unreasonable overtime incurred in the construction of the Facilities.

9. **Company's Obligation to Serve**. Subject to the condition that Developer fully perform its obligations under this Agreement, Company shall provide water utility service to all customers within the Development in accordance with Company's tariffs and schedule of rates and charges for service, the rules and regulations of the Commission and other regulatory authorities and requirements. However, Company shall have no obligation to accept and operate the Facilities in the event Developer fails to make any payment provided in this Agreement, fails to construct and install the Facilities in accordance with Company's standards and specifications and in accordance with the applicable rules and regulations of ADEQ, the Commission or any other governmental authority having jurisdiction thereover, or otherwise fails to comply with the terms and conditions of this Agreement. Developer acknowledges and understands that Company will not establish service to any customer within the Development until such time as Company has accepted the transfer of the Facilities, and all amounts that Developer is required to

pay Company hereunder have in fact been paid. The foregoing notwithstanding, the Company shall not terminate service to any customer within the Development to whom service has been properly established as a consequence of any subsequent breach or nonperformance by Developer hereunder.

10. **Liability for Income Taxes.** In the event it is determined that all or any portion of Developer's advances in aid of construction hereunder constituted taxable income to Company as of the date of this Agreement or at the time Company actually receives such advances hereunder, Developer will advance funds to Company equal to the income taxes resulting from Developer's advance hereunder. These funds shall be paid to Company within twenty (20) days following notification to Developer that a determination has been made that any such advances constitute taxable income, whether by virtue of any determination or notification by a governmental authority, amendment to the Internal Revenue Code, any regulation promulgated by the Internal Revenue Service, or similar change to any statute, rule or regulation relating to this matter. Such notification shall include documentation reasonably necessary to substantiate the Company's liability for income taxes resulting from the Developer's advances in aid of construction under this Agreement. In the event that additional funds are paid by Developer under this paragraph, such funds shall also constitute advances in aid of construction. In addition, Developer shall indemnify and hold Company harmless for, from and against any tax related interest, fines and penalties assessed against Company and other costs and expenses incurred by Company as a consequence of late payment by Developer of amounts described above.

11. **Notice.** All notices and other written communications required hereunder shall be sent to the parties as follows:

COMPANY:

Santa Cruz Water Company, L.L.C.
Attn: Cindy M. Liles, Vice President
22601 N. 19th Avenue
Suite 210
Phoenix, Arizona 85027

DEVELOPER:

_____
_____
_____
_____

Each party shall advise the other party in writing of any change in the manner in which notice is to be provided hereunder.

12. **Governing Law**. This Agreement, and all rights and obligations hereunder, shall be subject to and governed by the rules and regulations of the Commission relating to domestic water utilities and generally shall be governed by and construed in accordance with the laws of the State of Arizona. Developer understands and acknowledges that Company's rates and charges, and other terms and conditions applicable to its provision of utility service, may be modified from time-to-time by order of the Commission. Company shall provide Developer with copies of such orders that may affect Developer's rights and obligations hereunder.

13. **Time is of the Essence**. Time is and shall be of the essence of this Agreement.

14. **Indemnification: Risk of Loss**. Developer shall indemnify and hold Company harmless for, from and against any and all claims, demands and other liabilities and expenses (including attorneys' fees and other costs of litigation) arising out of or otherwise relating to Developer's failure to comply with any of the terms and conditions contained herein.,

including (without limitation) Company's refusal to serve any unit within the Development based on Developer's failure to pay all amounts required hereunder in a timely manner. Developer's duty to indemnify Company shall extend to all construction activities undertaken by Developer, its contractors, subcontractors, agents, and employees hereunder.

15. **Successors and Assigns**. This Agreement may be assigned by either of the parties provided that the assignee agrees in writing to be bound by and fully perform all of the assignor's duties and obligations hereunder. This Agreement and all terms and conditions contained herein shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.

16. **Dispute Resolution**. The parties hereto agree that each will use good faith efforts to resolve, through negotiation, disputes arising hereunder without resorting to mediation, arbitration or litigation.

17. **Integration: One Agreement**. This Agreement supersedes all prior agreements, contracts, representations and understandings concerning its subject matter, whether written or oral.

18. **Attorneys' Fees**. The prevailing party in any litigation or other proceeding concerning or related to this Agreement, or the enforcement thereof, shall be entitled to recover its costs and reasonable attorneys' fees.

19. **Authority to Perform**. Company represents and warrants to Developer that Company has the right, power and authority to enter into and fully perform this Agreement. Developer represents and warrants to Company that Developer has the right, power and authority to enter into and fully perform this Agreement.

DEVELOPER:

_____

_____

By_____

Its _____

COMPANY:

SANTA CRUZ WATER COMPANY, L.L.C.
an Arizona limited liability company

By _____

Cindy Liles

Its: Vice President

**EXHIBIT "A"**

**Legal Description**

**EXHIBIT "B"**

**Point(s) of Connection**

**EXHIBIT "C"**

**Water Facilities Budget**

**(Required to be completed by Developer prior to execution of agreement)**

| Item | QTY | UNIT | UNIT $ | TOTAL $ |
|---|---|---|---|---|
| 8" C-900, Class 150 Water Main | | LF | | |
| 8" Valve Box & Cover | | EA | | |
| Fire Hydrant, Complete | | EA | | |
| 3 / 4" Double Water Service | | EA | | |
| 3 / 4" Single Water Service | | EA | | |
| 1 ½' Landscape service | | EA | | |
| 2" Landscape service | | EA | | |
| 1" Landscape service | | EA | | |
| Subtotal | | | | |
| Sales Tax | | | | |
| Total | | | | |

EXHIBIT E

INFRASTRUCTURE COORDINATION AGREEMENT

LINE EXTENSION AGREEMENT – PALO VERDE UTILITIES COMPANY

**SEWER FACILITIES EXTENSION AGREEMENT**

This Agreement is made this _____ day of _____, 200__ by and between PALO VERDE UTILITIES COMPANY, L.L.C. an Arizona limited liability company ("Company"), _____, an _____ ("Developer").

**RECITALS**

A. Developer desires that sewer utility service be extended to and for its real estate development located in Parcel ____ of _____ consisting of ____ (single family, multi-family or commercial) lots, in Pinal County within the general vicinity of the City of Maricopa, Arizona (the "Development"). A legal description for the Development is attached hereto as Exhibit "A" and incorporated herein by this reference. The Development is located within Company's Certificate of Convenience and Necessity ("CC&N").

B. Company is a public service corporation as defined in Article XV, Section 2 of the Arizona Constitution which owns and operates a sewage treatment plant and collection system and holds a CC&N from the Commission granting Company the exclusive right to provide sewer utility service within portions of Pinal County, Arizona.

C. Developer is willing to construct and install facilities within the Development necessary to extend sewer utility service to and within the Development which facilities shall connect to the Company's system as generally shown on the map attached hereto as Exhibit "B." Company is willing to provide sewer utility service to the Development in

accordance with relevant law, including the rules and regulations of the Commission on the condition that Developer fully and timely perform the obligations and satisfy the conditions and requirements set forth below.

**COVENANTS AND AGREEMENTS**

NOW, THEREFORE, in consideration of the following covenants and agreements, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Construction of Facilities**. Developer agrees to construct and install sewage collection mains, manholes, pumping stations and/or such other facilities and improvements necessary to provide sewer utility service to each lot or building within the Development as more particularly described in Exhibit "C" attached hereto and incorporated herein by this reference (referred to hereinafter as the "Facilities"). The Facilities shall connect to the Company's system at the point shown on the approved plans as generally depicted on the map attached hereto as Exhibit "B," and shall be designed and constructed within the Development in a manner which allows the provision of safe and reliable sewer utility service to each lot therein. Subject to the terms and conditions set forth herein (including, without limitation, Company's rights of plan review and approval and inspection of final construction), Developer shall be responsible for all construction activities associated with the Facilities, and Developer shall be liable for and pay when due all costs, expenses, claims and liabilities associated with the construction and installation of the Facilities.

2. **Construction Standards and Requirements**. The Facilities shall meet and comply with Company's standards and specifications, and all engineering plans and specifications for the Facilities shall be approved by Company and its engineers ("Company's

Engineer") prior to the commencement of construction. Company and Company's Engineer shall review the plans and specifications and shall provide any requirements or comments as soon as practicable. Developer shall require that its contractor be bound by and conform to the plans and specifications for the Facilities as finally approved by Company. The construction and installation of the Facilities shall be in conformance with the applicable regulations of the Arizona Department of Environmental Quality ("ADEQ"), the Commission, and any other governmental authority having jurisdiction thereover.

3. **Right of Inspection; Corrective Action**. Company shall have the right to have Company's Engineer inspect and test the Facilities at reasonable times during the course of construction as necessary to ensure conformance with plans and specifications. If at any time before the final acceptance by Company of the Facilities any construction, materials or workmanship are found to be defective or deficient in any way, or the Facilities fail to conform to this Agreement, then Company may reject such defective or deficient construction, materials and/or workmanship and require Developer to fully pay for all necessary corrective construction efforts ("Corrective Action"). Company reserves the right to withhold approval and to forbid connection of any defective portion of the Facilities to Company's system unless and until the Facilities have been constructed in accordance with plans and specifications and all applicable regulatory requirements. Further, Developer shall promptly undertake any Corrective Action required to remedy such defects and deficiencies in construction, materials and workmanship upon receipt of notice by Company. The foregoing notwithstanding, Company shall not unreasonably withhold or delay acceptance of the Facilities.

4. **Transfer of Ownership**. Upon completion and approval of the as-built Facilities by Company and any other governmental authority whose approval is required,

Developer shall transfer all right, title and interest in the Facilities to Company via a bill of sale in a form satisfactory to Company. Company, in its sole discretion, may require Developer to conduct a video inspection of any of the Facilities prior to final approval and acceptance to ensure that no breaks or similar defects exist. Thereafter, Company shall be the sole owner of the Facilities and be responsible for their operation, maintenance and repair. Company's ownership and responsibility shall include all pumping stations, manholes, collection and transmission mains and/or related appurtenances within the Development up to the point of connection of the sewer line of each customer receiving service to the collection main. Maintenance and repair of each sewer service line, which lines are not part of the Facilities, shall be Developer's, the Development's or each individual customers' responsibility. All work performed by or on behalf of Developer shall be warranted by Developer for one year from the date of transfer of the Facilities to Company against defects in materials and workmanship. Developer shall also covenant, at the time of transfer, that the Facilities are free and clear of all liens and encumbrances, and unless the time period for filing lien claims has expired, shall provide evidence in the form of lien waivers that all claims of contractors, subcontractors, mechanics and materialmen have been paid and satisfied.

5. **Final As-Built Drawings and Accounting of Construction Costs.** Immediately following completion and approval of the Facilities, Developer shall provide Company with three sets of as-built drawings and specifications for the Facilities and a reproducible copy of such drawings. Developer shall also provide an accounting of the cost of constructing and installing the Facilities, which amount shall be refundable in accordance with paragraph 8, below. Company shall have no obligation to furnish service to the Development or to accept the transfer of the Facilities until Developer has complied with this paragraph.

other governmental authority having jurisdiction thereover, or otherwise fails to comply with the terms and conditions of this Agreement. Developer acknowledges and understands that Company will not establish service to any customer within the Development until such time as Company has accepted the transfer of the Facilities, and all amounts that Developer is required to pay Company hereunder have in fact been paid. The foregoing notwithstanding, the Company shall not terminate service to any customer within the Development to whom service has been properly established as a consequence of any subsequent breach or nonperformance by Developer hereunder.

10. **Liability for Income Taxes.** In the event it is determined that all or any portion of Developer's advances in aid of construction hereunder constituted taxable income to Company as of the date of this Agreement or at the time Company actually receives such advances hereunder, Developer will advance funds to Company equal to the income taxes resulting from Developer's advance hereunder. These funds shall be paid to Company within twenty (20) days following notification to Developer that a determination has been made that any such advances constitute taxable income, whether by virtue of any determination or notification by a governmental authority, amendment to the Internal Revenue Code, any regulation promulgated by the Internal Revenue Service, or similar change to any statute, rule or regulation relating to this matter. Such notification shall include documentation reasonably necessary to substantiate the Company's liability for income taxes resulting from the Developer's advances in aid of construction under this Agreement. In the event that additional funds are paid by Developer under this paragraph, such funds shall also constitute advances in aid of construction. In addition, Developer shall indemnify and hold Company harmless for, from and against any tax related interest, fines and penalties assessed against Company and other costs and expenses

incurred by Company as a consequence of late payment by Developer of amounts described above.

11. **Notice**. All notices and other written communications required hereunder shall be sent to the parties as follows:

COMPANY:

Palo Verde Utilities Company, L.L.C.
Attn: Cindy M. Liles, Vice President
22601 N. 19th Avenue
Suite 210
Phoenix, Arizona 85027

DEVELOPER:

_____
_____
_____
_____

Each party shall advise the other party in writing of any change in the manner in which notice is to be provided hereunder.

12. **Governing Law**. This Agreement, and all rights and obligations hereunder, shall be subject to and governed by the rules and regulations of the Commission relating to domestic sewer utilities and generally shall be governed by and construed in accordance with the laws of the State of Arizona. Developer understands and acknowledges that Company's rates and charges, and other terms and conditions applicable to its provision of utility service, may be modified from time-to-time by order of the Commission. Company shall provide Developer with copies of such orders that may affect Developer's rights and obligations hereunder.

13. **Time is of the Essence**. Time is and shall be of the essence of this Agreement.

14. **Indemnification: Risk of Loss**. Developer shall indemnify and hold Company harmless for, from and against any and all claims, demands and other liabilities and expenses (including attorneys' fees and other costs of litigation) arising out of or otherwise relating to Developer's failure to comply with any of the terms and conditions contained herein, including (without limitation) Company's refusal to serve any unit within the Development based on Developer's failure to pay all amounts required hereunder in a timely manner. Developer's duty to indemnify Company shall extend to all construction activities undertaken by Developer, its contractors, subcontractors, agents, and employees hereunder.

15. **Successors and Assigns**. This Agreement may be assigned by either of the parties provided that the assignee agrees in writing to be bound by and fully perform all of the assignor's duties and obligations hereunder. This Agreement and all terms and conditions contained herein shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.

16. **Dispute Resolution**. The parties hereto agree that each will use good faith efforts to resolve, through negotiation, disputes arising hereunder without resorting to mediation, arbitration or litigation.

17. **Integration: One Agreement**. This Agreement supersedes all prior agreements, contracts, representations and understandings concerning its subject matter, whether written or oral.

18. **Attorneys' Fees**. The prevailing party in any litigation or other proceeding concerning or related to this Agreement, or the enforcement thereof, shall be entitled to recover its costs and reasonable attorneys' fees.

19. **Authority to Perform**. Company represents and warrants to Developer that Company has the right, power and authority to enter into and fully perform this Agreement. Developer represents and warrants to Company that Developer has the right, power and authority to enter into and fully perform this Agreement.

DEVELOPER:

_____

_____

By_____

Its _____

COMPANY:

PALO VERDE UTILITIES COMPANY, L.L.C.,
an Arizona limited liability company

By _____

Cindy M. Liles

Its: Vice President

**EXHIBIT "A"**

**Legal Description**

**EXHIBIT "B"**

**Point(s) of Connection**

## EXHIBIT "C"

### Wastewater Facilities Budget

### (Required to be completed by Developer prior to execution of agreement

| Item | QTY | UNIT | UNIT $ | TOTAL $ |
|---|---|---|---|---|
| 8" SDR 35 Sewer Main | | LF | | |
| 10" SDR 35 Sewer Main | | LF | | |
| 4' Manhole | | EA | | |
| Sewer Cleanout | | EA | | |
| 4" Sewer Service | | EA | | |
| Subtotal | | | | |
| Sales Tax | | | | |
| Total | | | | |

# EXHIBIT B

ORIGINAL



ARIZONA CORPORATION COMMISSION

RECEIVED

2006 APR 28 P 4: 45

AZ CORP COMMISSION
DOCUMENT CONTROL

06D

April 28, 2006

Michael W. Patten
Roshka DeWulf & Patten, PLC
One Arizona Center Street
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004

RE: Palo Verde Utilities Company, L.L.C. and Santa Cruz Water Company, L.L.C. – Applications for Extensions of its Certificate of Convenience and Necessity (CC&N)
Docket No. SW-03575A-05-0926 and W-03576A-05-0926
and
Arizona Water Company, an Arizona Corporation – Application for Extension of its CC&N Docket No. W-01445A-06-0199
INSUFFICIENCY LETTER #2

Dear Sir:

In reference to the above mentioned application filed on December 28, 2005, and the supporting documents filed on April 6, 2006, this letter is to inform you that the application still has not met the sufficiency requirements as outlined in the Arizona Administrative Code. The deficiencies are:

1. The water usage data for the last 13 months for Santa Cruz Water system that was provided in response to the Insufficiency Letter dated February 8, 2006, contains partial information. Please provide a copy of the water usage data for the last 13 months for Santa Cruz Water system using the attached form. (See Attachment #1).

2. In the proposed estimates for Phase I of the water treatment facility, the Company did not provide any amount for well reconstruction/well repair. Please explain why there is no estimate for well rehabilitation work.

3. Please identify which of the 29 wells in the SESA are proposed for Phase I?

4. Are all the wells proposed for Phase I located in Section 27 of T5S, R4E? If no, please provide their locations.

5. Please specify the values and sizes of the proposed plant items. For example: the Company needs to specify for the reservoirs and pressure tanks, the size in gallons; the number of tanks; the horsepower for pumps, etc.

6. Santa Cruz Water Company is proposing to use a "disinfection" system for the water treatment facility that would serve the extension area, but failed to disclose the type. Please clarify what type of disinfection system (such as UV, ozone, chlorination, etc.) is proposed.

7. Please specify how much CAP water allocation the Company will deploy to the SESA surface water treatment plant.

8. The wastewater flow records for the last 13 months for Palo Verde that was provided in response to the Insufficiency Letter dated February 8, 2006, contains partial information. Please provide a copy of the wastewater flow records for the last 13 months for Palo Verde using the attached form. (See Attachment #2).

9. Please file an amended legal description for the requested area. While plotting the requested area using the legal description that was provided in the Application, Staff found that portions of the requested area have already been certificated to other companies. Below are the areas that Staff found that have been certificated to others.

   For water:

   T5S, R3E, Section 25; W 1/2 of SE 1/4 - a portion of this request overlaps Santa Rosa's area
   T7S, R3E, Section 12; W 1/2 - is certificated to Arizona Water

   Also, Copper Mountain Ranch Community Facilities District is no longer under the Arizona Corporation Commission's jurisdiction but the following portions of their area are being requested in this application:

   T5S, R4E, Section 26; W 1/2 - Section 34; E 1/2 - Section 35
   T6S, R4E, Section 4; W 1/2 - Section 5; E 1/2 & NW 1/4

   For sewer:

   T5S, R3E, Section 25; W 1/2 of SE 1/4 - a portion of this request overlaps Santa Rosa's area

   T6S, R4E, Sections 14 & 15 - certificated to Francisco Grande

Staff would like to use this opportunity to bring the following to your attention:

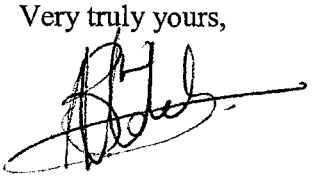
- Pursuant to the Arizona Administrative Code ("A.A.C.") R-14-2-411(C), the time-frame for administrative completeness review shall be suspended from the time the notice of deficiency is issued until staff determines that the application is complete. Upon meeting sufficiency requirements, the Commission has 150

calendar days for its substantive review. This includes conducting a hearing and preparing Opinion and Order to present to the Commission at an Open Meeting.

**Please file your response to this Insufficiency Letter with Docket Control.**

If you have any questions concerning this matter, please do not hesitate to contact me at 602-542-0840 or Dorothy Hains at 602-542-7274.

Very truly yours,



Blessing N. Chukwu
Executive Consultant III

BNC
cc: Docket Control
Del Smith
Lyn Farmer
Brian Bozzo
Vicki Wallace

Attachment #1

# WATER USE DATA SHEET

| | |
|---|---|
| NAME OF COMPANY → | |
| ADEQ Public Water System No. → | |

| MONTH/YEAR (Last 13 Months | NUMBER OF CUSTOMERS | GALLONS SOLD (Thousands) | GALLONS PUMPED | GALLONS PURCHASED |
|---|---|---|---|---|
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| STORAGE TANK CAPACITY (Gallons) | NUMBER OF EACH | ARIZONA DEPT. OF WATER RESOURCES WELL I.D. NUMBER | WELL PRODUCTION (Gallons per Minute) |
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|---|---|---|
| Other Water Sources in Gallons per Minute → | GPM | |
| Fire Hydrants on System → | Yes | No |
| Total Water Pumped Last 13 Months (Gallons in Thousands) → | | |

Attachment #2

# WASTEWATER FLOWS

| MONTH/YEAR (Most Recent 12 Months) | NUMBER OF SERVICES | TOTAL MONTHLY SEWAGE FLOW | SEWAGE FLOW ON PEAK DAY |
|---|---|---|---|
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